

Ramanna Vs. Abdulla

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Court : Karnataka

Decided On : Oct-07-1985

Reported in : ILR1986KAR953

Judge : Chandrakantaraj Urs, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1), 50 and 50(2); Code of Civil Procedure (CPC) - Sections 115

Appeal No. : C.R.P. No. 1363 of 1982

Appellant : Ramanna

Respondent : Abdulla

Advocate for Def. : G.B. Manjunath, Adv. for R-1(a) to R-1(c)

Advocate for Pet/Ap. : V.Tarakaram, Adv.

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. This is a revision under Section 115 of the C.P.C. preferred by the landlord against the order of the District Judge. Mysore, dated 12-1-1982 made in HR. CRP. No. 47/1980. That revision was preferred by the legal representatives of the

deceased tenant who suffered an order of eviction by the Munsiff, Mysore, made in HRC. No. 435/1976. That eviction Petition was presented by the landlord seeking possession of the residential portion of the schedule premises leased to the tenant on the sole ground that the same was required for his bone fide use and occupation, as he had no other house of his own and that he was not in a position to continue to live with his sister.

2. The tenant resisted the eviction Petition on the ground that the requirement made out by the landlord was not genuine ; not reasonable nor bona fids ; that the landlord was quietly residing with his sister and there was no cause for him to change his residence and in any event greater hardship would be caused to the tenant as he was running in the adjoining premises a hotel-restaurant and therefore the Petition may be rejected.

3. On the points formulated in regard to the bona fide requirement of the landlord and the comparative hardship the Learned Munsiff on the basis of the evidence adduced by the parties, came to the conclusion that the landlord deserved an order of eviction as he was without a house of his own and he had purchased the premises for his own bona fide use and occupation. On the question of comparative hardship also he found in favour of the landlord. On the tenants' revision before him, the District Judge has reversed the finding of the learned Munsiff essentially on two grounds :

(1) That in the pleading the petitioner did not disclose the nature of ill-will between himself and his sister ;

(2) That in the cross-examination, the petitioner-landlord had admitted that he had no ill-will towards his younger sister who had come to live with him.

4. From the above two facts, the District Judge inferred that the landlord should be penalised for not putting the proper pleading and as he had no ill-will towards the younger sister, he cannot have good grounds for leaving the other sister's house.

5. The difficult task under Section 115 of the C.P.C. is made more difficult by the attitude of the District Judges exercising their revisional power under Sub-section

(2) of Section 50 of the Karnataka Rent Control Act, 1961, (hereinafter referred to as the Act). The number of decisions which this Court has come across rendered by the District Judges exercising their power under Sub-section (2) of Section 50 of the Act leaves me in grave doubt as to whether the legislature has accomplished anything by amending the Act by replacing the appellate jurisdiction of the District Judge with power of revision only. The amendment does not seem to have made any difference as all the cases without exception are disposed of by the District Judges as if they were hearing the appeal acting as a Court under the Act.

6. It is now well settled principle of law that revisional and appellate jurisdiction though corrective in nature exercised by superior Courts over inferior Courts are not the same, though they are similar. The revisional power conferred by whatever language used in the Statute making it wider or narrower than the revision under Section 115 of the C.P.C. nevertheless remains revisional jurisdiction can never be equated with the appellate Court's jurisdiction. It is equally understood now that appellate Courts have all the powers of the Trial Court or the Court of first instance and that power may be exercised at any stage during the pendency of the appeal before the Appellate Court. The revisional jurisdiction, on the other hand, is also corrective jurisdiction, but, essentially directed against jurisdictional errors that the Trial Court or the Court of first instance may commit. The revisional jurisdiction is exercisable suo motu the motion of one of the parties. It may be against the final orders or it may be against interlocutory orders passed by the Court of first instance. If we look at the principle under the C.P.C. not all interlocutory orders are appealable only those which are singled out are subjected to an appeal and all orders which are revisable are those against which there is no appeal, if this distinction is borne in mind the distinction having been made by the draftsman of the C.P.C. for India. it is not difficult to understand the distinction between the revisional and appellate jurisdiction.

7. Venkataswami, J., (as he then was) in the case of M. Ramachandraiah v. S. R. Shankaranarayana Setty, 1968 (1) Mys LJ 442 had occasion to consider the wide language employed in conferring the revisional jurisdiction on the High Court and the District Judge under the Act. There, the question was whether there was any

difference at all between Section 50 of the Act as it was then and Section 115 of the C.P.C. In that context it was observed by the Learned Judge relying upon the ruling of the Supreme Court that the provisions of Section 115 of the C.P.C. had been examined by judicial decisions on several occasions and while exercising its jurisdiction under Section 115 of the C.P.C. it is was not competent to the High Court to correct the errors of fact, however gross they may be or even errors of law unless the said errors had relation to the jurisdiction of the Court to try the dispute itself. Later, in the course of the order, the Learned Judge pointed out the futile exercise that the High Court would be subjected to, if it was precluded from sifting through the evidence in the case to find out the errors of jurisdiction. On that principle it was pointed out that even in revision, the revisional Court had the power to sift through the evidence in order to find out the jurisdictional errors and no more.

8. Undoubtedly, the language employed in Sub-section (2) of Section 50 of the Act confers wider jurisdiction on the District Judge than what Section 115 of the C.P.C does on the High Court. But that wider jurisdiction cannot be mistaken so as to imagine the District Judge as clothed with the power of an Appellate Court. The exercise of power in revision remains essentially revisional. The oft stated rule that jurisdiction under Section 115 of the C.P.C. does not amount to conferring power on the High Court to act as second Court of first appeal equally applies to the revisional jurisdiction of the District Judge under Section 50(2) of the Act. The corrective jurisdiction which certainly would include correction of law or correction of facts must be relatable to the evidence on record. Merely because one other view is possible on the basis of the evidence recorded. it does not mean the District Judge should discard the view taken by the Munsiff in order to disagree with the view taken by the Munsiff. It must be demonstrable that the Munsiff had taken a perverse view which was not traceable to the evidence on record or such evidence would not lead to the inference drawn by the Munsiff, Such wide corrective jurisdiction of fact cannot be treated as licence to form his own view merely because that view also is a plausible view.

9. By now the High Court is accustomed to long orders passed by the District Judges under the Act while disposing of revision petitions. There is a total fresh

approach to the facts of the case, the evidence in the case and the pleadings in the case almost without exception. This should be discouraged. The scheme of the Act is such that remedy to the landlord as well as protection to the tenant is meant to be expeditious and not long drawn out tussle. That is why the summary procedure is prescribed for the Court under the Act. Generally, orders resulting in summary procedure are not subjected to appeal but to revision only (as under the Small Cause Courts Act). The very purpose of summary procedure is expeditious disposal and it would be defeated if in revision approach is made as if one is hearing an appeal against such summary orders.

10. In the instant case, the Munsiff was not as curious to know about the cause of the ill-will between the brother and the sister. He was satisfied on the sworn testimony of the landlord that he had reasons to leave his sister's house and live separately. The District Judge's insistence that the cause for the reason for ill-will be disclosed in the plaint is no more than idle curiosity. The litigants even if they have been compelled to come to the Court are entitled to the same protection in regard to their privacy. They do not have to disclose material details of the disharmony in the family whether it be husband and wife, father and son, brother and sister or mother-in-law or daughter-in-law that such meticulous details as to inform the whole world of the situation that exists in that family. It will be sufficient for the landlord to prove that he has reasons of his own volition to part company with the rest of his family with whom he is residing as a concession and not as of right. If that concessional position is not a perpetual position without legal substance then the Court should accept such evidence as he adduces in regard to ownership of his premises and his desire not to live on account of the disharmony in the family he has complained of.

11. For this reason, the Learned District Judge exceeded his jurisdiction under Sub-section (2) of Section 50 of the Act, in discarding the conclusions reached by the Munsiff without sufficient provocation and without noticing any legal infirmity in that conclusion.

12. I, therefore have no hesitation to interfere with this order of the District Judge and set aside the same and restore that of the Munsiff and direct eviction of the

tenant from the premises. Having regard to the submission made by the Learned Counsel for the tenant, the tenant would be put to greater hardship not being separate from her hotel, six months' time from to-day is given to the tenant to hand over the residential part of the premises to the landlord.

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